

SENATE BILL 993

By Gardenhire

AN ACT to amend Tennessee Code Annotated, Title 3;  
Title 4; Title 8; Title 9; Title 12 and Title 49, relative  
to acquisition of goods and services by the state.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 3-7-112(c), is amended by  
adding the following new subdivision:

( ) Noncompetitive procurement agreements, including grants and contracts, to  
procure non-research-related goods or services from entities that are not governmental  
entities;

SECTION 2. Tennessee Code Annotated, Section 4-56-107(a), is amended by deleting  
the subsection and substituting instead the following:

(a)

(1) All requests of the procuring agency to procure goods or services  
through a noncompetitive contract must be contemporaneously filed with the  
fiscal review committee of the general assembly, comptroller of the treasury, and  
the chief procurement officer. For purposes of this section, "noncompetitive  
contract" includes any procurement arrangement, including, but not limited to, a  
grant or contract, but does not include a grant or contract awarded to a:

(A) Public institution of higher education to procure research or  
public service-related goods or services; or

(B) Governmental entity, including, but not limited to, a local  
government.

(2) If review is required pursuant to subsection (a), the procuring agency shall provide the request to the fiscal review committee, which must include the following:

(A) Description of the goods or services to be acquired;

(B) Explanation of the need for or requirement to acquire the goods or services;

(C) Name and address of the proposed contractor's principal owner;

(D) Evidence that the proposed contractor has experience in providing the same or similar goods or services and evidence of the length of time the contractor has provided the same or similar goods or services;

(E) Explanation of whether the goods or services were purchased by the procuring agency in the past and, if applicable, the method used to purchase the goods or services and the name and address of the contractor;

(F) Description of the procuring agency's efforts to use existing state employees and resources or, in the alternative, to identify reasonable and competitive procurement alternatives, rather than to use noncompetitive negotiation;

(G) Justification of why the goods or services should be acquired through noncompetitive negotiation; and

(H) Any additional information that the fiscal review committee may direct the procuring agency to provide that will assist the committee in evaluating the contract.

SECTION 3. Tennessee Code Annotated, Section 4-56-107, is amended by adding the following new subsection:

(c)

(1) No later than the first business day of each calendar month, the chief procurement officer shall report to the director of the fiscal review committee the following information for the prior calendar month:

(A) An itemized listing of all contracts, grants, or any other noncompetitive procurement means that were awarded the previous month; and

(B) Any policy, procedure, or rule change to the state procurement processes planned for the following month.

(2) The reports required pursuant to subdivision (c)(1) must include the name of the department or agency for which the procurement is being made, the name and contact information for the vendor, identification of the goods or services being procured, the term on the procurement method, as well as any expenditures and revenue associated with the procurement.

SECTION 4. Tennessee Code Annotated, Section 8-50-501(a), is amended by adding the following as a new subdivision:

( ) The chief procurement officer appointed pursuant to § 4-56-104;

SECTION 5. Tennessee Code Annotated, Section 12-3-504, is amended by deleting the section and substituting instead the following:

(a) The chief procurement officer may identify goods or services that may not be procured by competitive means because of the existence of a single source of supply.

(b) The chief procurement officer must submit to the procurement commission for approval rules, policies, and procedures prescribing the manner in which such procurements may be accomplished, which may include noncompetitive negotiation.

(c) Goods or services that may not be procured by competitive means because of the existence of a single source of supply must be purchased in accordance with rules, policies, and procedures approved by the procurement commission.

SECTION 6. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following new section:

(a) It is an offense for a public officer or employee involved in administering or making a procurement agreement on behalf of this state to accept employment with any person or entity with whom the officer or employee dealt in an official capacity concerning the procurement transaction for twenty-four (24) months from the ending of the contract or one (1) year immediately following departure from employment as the public officer or employee, whichever occurs first.

(b) For purposes of this section, a public officer or employee is involved in administering or making a procurement agreement if the officer or employee oversees the performance of the agreement, has authority to make decisions regarding the agreement or to interpret the agreement, or participates in the development of the terms or award of the agreement. A public officer or employee is not involved in making or administering a procurement agreement solely because of the performance of ministerial duties related to the agreement.

(c) For purposes of this section, "procurement agreement" means any agreement to procure goods or services, including, but not limited to, a contract or grant, but does not include a contract or grant by a public institution of higher education to procure research or public service-related goods or services.

(d) A violation of this section is a Class A misdemeanor.

SECTION 7. This act takes effect upon becoming a law, the public welfare requiring it, and applies to procurements and actions related to procurements occurring thirty (30) days after the effective date of this act.